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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,846	08/27/2001	Rebecca L. Poole	STL920000085US1	3150
22462	7590	04/19/2007	EXAMINER	
GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045			STEELMAN, MARY J	
			ART UNIT	PAPER NUMBER
			2191	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/939,846	POOLE ET AL.	
Examiner	Art Unit		
MARY STEELMAN	2191		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 February 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,2,4-7,9-12, 14 and 15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1, 2, 4-7, 9-12, 14, 15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This Office Action is in response to Remarks received 02/01/2007. Claims 1, 2, 4-7, 9-12, 14, and 15 are pending.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11, 12, 14, and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims recite "an article of manufacture comprising a computer readable device or medium embodying instructions..." As noted in the Specification at [0025], this includes carrier and signal embodiments, which are non-statutory. Claims may be amended to recite –an article of manufacture comprising a computer readable storage device or storage medium...

### ***Double Patenting***

3. As noted in the prior Office Action, claims 1, 2, 4-7, 9-12, 14, and 15 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims (1, 5, 7-8) of co-pending Application No. 09/939,813 (hereinafter '813) respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observation. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) maybe used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

As stated by Applicant in Remarks, the double patent rejections will be substantially addressed by Applicant upon an indication of allowable subject matter.

***Allowable Subject Matter***

4. Claims 1, 2, 4-7, 9-12, 14, and 15 are allowed.
5. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

6. The following is a statement of reasons for the indication of allowable subject matter:

Regarding independent claims 1, 6, and 11, as Applicant has noted on page 11, 3<sup>rd</sup> paragraph of Remarks received 02/01/2007, Charisius (2002/0078432A1) fails to teach:

“an Interactive Agent that monitors the Meta-model for an occurrence of an event that comprises a possible non-optimization in a portion of the multi-tier business application based upon an heuristic analysis of information gathered by the Composer and stored within the Meta-model, and the knowledge base is structured in such a way that the occurrence of the event causes the Interactive Agent to access the knowledge base to identify context information comprising a list of suggested and recommended actions for the event, in order to trigger a display of a graphical element including the context information in the Composer to interact with the developer.”

An update search produced a related Patent Application Publication 2002/0104067 A1 to Green et al. (1999) Green disclosed [0045] an N-tier application may be designed using...rules...ensuring that the software component is in compliance... [0052], rules for building software components with the knowledge of or ability to access other software components based on the interface specified by tier [0084], business rules , rules database [0085], software components can implement additional behavior to visually render, analyze, or modify model. [0106], GPPProcessor tracks the requirements of filters in a processing model..to satisfy these requirements, monitors / optimizes the flow of data through a model...holds an abstract list of inputs, outputs, and parameters required by processing software components.

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[0122], Model-View-Controller design pattern [0150], to create a software application a set of application requirements is determined...heuristically...using predetermined N-tier architecture rules and optional wizards, a system designer determines a list of required models and software components to satisfy the application requirements [0151], The N-tier architecture rules will further comprise rules for restructuring software components in inventory to ensure conformance with all other application design rules... Green fails to explicitly disclose the limitations cited above.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Steelman, whose telephone number is (571) 272-3704. The examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached at (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned: 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman  
04/04/2007

